

E-Filed 8/31/06

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CENTER FOR BIOLOGICAL DIVERSITY, et al.,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT, et al.,

Defendants.

Case Number C 04-4736 JF

ORDER¹ GRANTING PLAINTIFFS'
REQUEST FOR AN ENLARGEMENT
OF TIME

On August 21, 2006, pursuant to Federal Rule of Civil Procedure 6(b)(2), Plaintiffs Center for Biological Diversity and California Native Plant Society filed a motion for an enlargement of time for filing a motion for attorneys fees. The federal Defendants oppose the motion. The Court has considered this matter without oral argument, pursuant to Civil Local Rule 7-1(b).

On August 3, 2006, this Court issued an Order dismissing the instant action, pursuant to the parties' stipulation. Federal Rule of Civil Procedure 54(d)(2) provides that, "[u]nless otherwise provided by statute or order of the court," a motion for attorneys fees "must be filed no later than 14 days after entry of judgment." Accordingly, any motion for attorneys fees in the

¹ This disposition is not designated for publication and may not be cited.

1 instant action should have been filed no later than August 17, 2006.

2 Brian A. Litmans (“Litmans”), one of two attorneys representing the Plaintiffs, has
3 submitted a declaration in support of the instant motion. He states that, on Friday August 4,
4 2006, he entered the date for the filing of a motion for attorneys fees as August 17, 2006 on his
5 desktop computer. Litmans Decl. ¶ 5. On Monday August 7, 2006, he manually transferred files
6 to his new laptop, which he would use in his new office in Portland, Oregon. *Id.* ¶ 6. During this
7 process, he made the error of entering the filing date in the Outlook program on his laptop as
8 August 24, 2006. *Id.* He first learned of this error while conferring with co-counsel on August
9 21, 2006 and filed the instant motion for an enlargement of time that same day. *Id.* Plaintiffs
10 request an enlargement of time until September 3, 2006, but note that they would be prepared to
11 file a motion for attorneys fees as early as August 24, 2006.

12 Federal Rule of Civil Procedure 6(b) “allow[s] filing after the expiration of the deadline
13 because the failure to timely file was the result of excusable neglect.” *Committee for Idaho’s*
14 *High Desert, Inc. v. Yost*, 92 F.3d 814, 824 (9th Cir. 1996). It is within this Court’s discretion to
15 grant a Rule 6(b) motion for an enlargement of time. *Id.* As the Supreme Court has noted, “the
16 Courts of Appeals have generally recognized that ‘excusable neglect’ may extend to inadvertent
17 delays.” *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 391-
18 92 (1993). “Although inadvertence, ignorance of the rules, or mistakes construing the rules do
19 not usually constitute ‘excusable’ neglect, it is clear that ‘excusable neglect’ under Rule 6(b) is a
20 somewhat ‘elastic concept’ and is not limited strictly to omissions caused by circumstances
21 beyond the control of the movant.” *Id.* at 392. The determination of whether neglect is
22 excusable “is at bottom an equitable one,” and the Court must consider “all relevant
23 circumstances surrounding the party’s omission.” *Id.* at 395. The relevant circumstances
24 include: “the danger of prejudice to the debtor, the length of the delay and its potential impact on
25 judicial proceedings, the reason for the delay, including whether it was within the reasonable
26 control of the movant, and whether the movant acted in good faith.” *Id.*

27 Defendants contend that Plaintiffs’ neglect is not excusable. They argue that Plaintiffs
28 have not established that their neglect was similar to the “failure of a ‘carefully designed’

1 calendaring system operated by experienced paralegals that heretofore had worked flawlessly” in
2 *Pincay v. Andrews*, 389 F.3d 853, 859 (9th Cir. 2004). Defendants mischaracterize *Picay*, which
3 held that courts should “determine the issue of excusable neglect within the context of the
4 particular case,” and that “[a]ny rationale suggesting that misinterpretation of an unambiguous
5 rule can never be excusable neglect is, in our view, contrary to that instruction.” *Id.*

6 Defendant also argues that there is no reason why Plaintiffs’ lead counsel, Michael Graf
7 (“Graf”), did not keep track of the correct filing date himself. Graf has submitted a declaration in
8 which he explains that he is listed as “lead counsel” only because Litmans is before this Court
9 *Pro Hac Vice*, and that they have worked as equal co-counsel throughout the instant litigation.
10 Graf Decl. ¶ 2. Graf and Litmans have divided the work required for the litigation in order “to
11 litigate in an efficient manner given the limited resources we have to expend in operating
12 respective solo practices representing public interest environmental organizations.” *Id.* This
13 division of work between Graf and Litmans is a reasonable explanation of why Graf did not keep
14 track of the filing date himself.

15 Thus, Plaintiffs have presented evidence that their short delay was the result of excusable
16 neglect. Because the delay was short and the motion at issue is a motion for attorneys fees
17 following the settlement of the instant action, an enlargement of time will have very little impact
18 on judicial proceedings. Additionally, Defendants have not shown, or even argued, that they will
19 suffer any prejudice if this Court grants Plaintiffs’ motion for an enlargement of time.
20 Accordingly, the Court will grant the instant motion. Because the Court has been unavailable to
21 rule on the instant motion until August 31, 2006, the Plaintiffs shall file their motion for
22 attorneys fees not later than September 8, 2006.

23 IT IS SO ORDERED.

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25 DATED: August 31, 2006

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28 
JEREMY FOCHEL
United States District Judge

1 This Order has been served upon the following persons:

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